HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

International Court of Justice

(1) *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*

On 30 November 2010, the International Court of Justice delivered its judgment in the dispute between the Republic of Guinea (Guinea) and the Democratic Republic of the Congo (DRC) concerning the treatment of Mr. Diallo, a Guinean national and citizen of the DRC. Exercising its rights of diplomatic protection, Guinea complained about the alleged mistreatment of Mr. Diallo as a person and as an '*associé*' in his Congolese companies by the DRC at various periods in the late 1980s and mid 1990s. Mr. Diallo's mistreatment consisted of his arrest, detention and expulsion from the DRC and the deprivation of his right to take part and vote in general meetings, his rights relating to the '*gérance*' of the companies, his rights to oversee and monitor the management of the companies as well as certain property rights. The Court ruled that by arresting and detaining Mr. Diallo in the 1990s, the DRC had breached its obligations towards Guinea under Article 9 of the International Convention on Civil and Political Rights (ICCPR), Article 6 of the African Charter on Human Rights (ACHR) as well as under Article 36 of the Vienna Convention on Consular Relations. Further the Court ruled that by expelling Mr. Diallo, the DRC had breached its obligations towards Guinea under Article 13 ICCPR and Article 12 ACHR. Guinea's complaints in relation to Mr. Diallo's treatment as an '*associé*' in his two Congolese companies were dismissed. If Guinea and the DRC are unable to reach agreement on appropriate compensation within six months from the date of the judgment, then the Court will settle the matter.

International Criminal Tribunal for the Former Yugoslavia

(1) *The Prosecutor* v. *Šljivančanin (Appeals Chamber)*

On 8 December 2010, the Appeals Chamber of the ICTY rendered its first review judgment in the case of Šljivančanin. Šljivančanin is a former Major in the Yugoslav People's Army holding the post of Head of Security. He was sentenced to

1. See: <www.icj-cij.org/>; <www.icty.org>; <www.unictr.org>; <www.pca-cpa.org/>; and <www.haguejusticeportal.net/>.

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17 years' imprisonment on 5 May 2009 by the Appeals Chamber of the ICTY for aiding and abetting the torture of over 200 prisoners of war after the fall of Vukovar in Croatia in November 1991 (for which he was convicted by the Trial Chamber on 27 September 2007) as well as for aiding and abetting their murder. Following new testimonial evidence from a former Yugoslav Army officer – Panić – the Appeals Chamber quashed Šljivančanin's conviction for aiding and abetting the murder of the prisoners. Panić testified that Šljivančanin had not been informed by Mrkšić (the former commander of all Serb forces including the Territorial Defence and paramilitary forces in the Vukovar area and sentenced to 20 years' imprisonment) about his decision to withdraw the troops who guarded the prisoners. Therefore the Appeals Chamber held that Šljivančanin's intention to kill the prisoners could no longer be proven. The Appeals Chamber reduced Šljivančanin's sentence to 10 years' imprisonment.

(2) *The Prosecutor* v. *Đorđević (Trial Chamber)*

On 23 February 2011, Trial Chamber II of the ICTY convicted Đorđević of war crimes and crimes against humanity committed against Kosovo Albanians in Kosovo in 1999. He was sentenced to 27 years' imprisonment. Đorđević was the former Assistant Minister of the Serbian Ministry of Internal Affairs and the Chief of the Public Security Department. The Trial Chamber held that Đorđević had participated in a Joint Criminal Enterprise, together with Milošević, the late former President of the Federal Republic of Yugoslavia, Šainović, the former Deputy Prime Minister of the Federal Republic of Yugoslavia, and other high officials. The aim of the Joint Criminal Enterprise had been to change the ethnic balance of Kosovo by means of a campaign of terror and violence to ensure Serbian dominance. Đorđević was held responsible for deportations (at least 200,000 people, which the Trial Chamber regarded as a conservative estimate), murders (no less than 724, mostly unarmed civilians, including women and children) and persecutions in thirteen municipalities listed in the indictment. Đorđević was also found responsible for a coordinated operation to remove evidence of the crimes committed. According to the Trial Chamber, Đorđević's participation in the Joint Criminal Enterprise had been crucial to its success.

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